

1 ELISE D. KLEIN, SB# 111712
E-Mail: klein@lbbslaw.com
2 JANELLE F. GARCHIE, SB# 118453
E-Mail: garchie@lbbslaw.com
3 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
650 West "C" Street, Suite 800
4 San Diego, California 92101
Telephone: (619) 233-1006
5 Facsimile: (619) 233-8627

6 Attorneys for HEALTH NET OF CALIFORNIA, INC.

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 FRED A SUSSMAN,
12 Plaintiff,

13 v.

14 ARMELIA SANI, M.D., SHILEY EYE
CENTER, UCSD MEDICAL CENTER,
15 REGENTS OF THE UNIVERSITY OF
CALIFORNIA, HEALTH NET, INC.,
16 HEALTH NET SENIORITY PLUS,
LINDA BEACH, HAIDEE
17 GUTIERREZ, and DOES 1 through 40,
inclusive,

18 Defendants.
19

CASE NO. 08 CV 0392 H BLM

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
SECTION 1441(b) (FEDERAL
QUESTION)

20 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

21 PLEASE TAKE NOTICE that defendant Health Net of California, Inc.,
22 ("Health Net") hereby removes to this Court the state court action described below.

23 1. On November 13, 2007, Freda Sussman ("plaintiff") commenced an
24 action against Health Net entitled *Freda Sussman v. Armelia Sani, M.D. et al.*, San
25 Diego County Superior Court Case No. 37-2007-00081656-CU-MM-CTL (the
26 "Action"). True and correct copies of the Summons and Complaint, and the other
27 documents that were served on Health Net concurrently therewith, are collectively
28 attached hereto as Exhibit "A."

FILED

2008 MAR -3 PM 4:17

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY DEPUTY

1 2. Health Net was served with the Summons and Complaint on January 31,
2 2008; hence this notice of removal is timely.

3 3. The Action is a civil action of which this Court has original jurisdiction
4 under 28 U.S.C. section 1331, and is one which may be removed to this Court by
5 defendant pursuant to the provisions of 28 U.S.C. section 1441(b) in that it is based
6 upon federal question jurisdiction.

7 4. The Complaint filed in the Action asserts claims against Health Net under
8 the Medicare Act and specifically under the 2003 amendment to the Medicare Act
9 known as the Medicare Prescription Drug, Improvement, and Modernization Act of
10 2003 ("MMA"). This Court has jurisdiction over such claims pursuant to the Act,
11 and the Action may therefore be removed to this Court pursuant to 28 U.S.C. section
12 1441(b).

13 5. In enacting the MMA, Congress declared that "[t]he standards established
14 under this part shall supersede any State law or regulation (other than State licensing
15 laws of State laws relating to plan solvency) with respect to MA [Medicare
16 Advantage] plans which are offered by MA organizations under this part." (42
17 U.S.C. § 1395w-26(b)(3).)

18 6. The Code of Federal Regulations provides that the MMA "establishes
19 standards and sets for the requirements, limitations, and procedures for Medicare
20 services furnished, or paid for, by Medicare Advantage organizations through
21 Medicare Advantage plans." (42 C.F.R. Ch. IV, Subch. B, Part 422, Medicare
22 Advantage Program, § 422.1.) The regulations contain a grievance procedure to
23 address complaints regarding benefits and coverage provided by Medicare
24 Advantage plans. (42 C.F.R. §§ 422.560 *et seq.*) Section 422.80 regulates marketing
25 materials and election forms used by Medicare Advantage plans. "Marketing
26 materials" are defined as including "any informational materials targeted to Medicare
27 beneficiaries" which promote the Medicare Advantage plan, inform Medicare
28 beneficiaries about enrollment, explain the benefits of enrollment, or explain how

1 Medicare services are covered under the Medicare Advantage plan. (42 C.F.R. §
2 422.80(b)(1)-(4).)

3 7. State statutory and common law contract and tort claims that relate to a
4 Medicare Advantage plan are pre-empted by the Medicare Act and the MMA. Even
5 if a complaint asserts only state claims and does not refer to the Medicare Act or the
6 MMA, the suit may be removed because the Medicare Act and the MMA create a
7 federal cause of action over claims by a plan member concerning the "requirements,
8 limitations, and procedures for Medicare services furnished, or paid for, by Medicare
9 Advantage organizations through Medicare Advantage plans." (42 C.F.R. § 422.1.)
10 Any claims alleging the improper denial of Medicare Advantage contract benefits or
11 deceptive marketing of a Medicare Advantage plan are removable, even though the
12 grounds for removal may not appear on the face of the complaint.

13 8. In this case, Plaintiff alleges three causes of action against Health Net
14 arising out of her membership in the Medicare Advantage plan "Seniority Plus," (1)
15 Bad Faith Insurance Tactics; (2) Fraud and Deceit; and (3) Unfair Business Practices.
16 Plaintiff alleges that Health Net denied recommended rehabilitation services without
17 adequate investigation. Plaintiff further alleges that Health Net made marketing
18 misrepresentations to her and other members of the public to induce them to enroll in
19 Seniority Plus. Finally, plaintiff alleges unfair business practices against Health Net,
20 by using incentives and disincentives to health care providers. (*Complaint*, ¶¶ 52-
21 73.) The Medicare Act and the MMA afford complete preemption of plaintiff's
22 claims in this Action. (*See Clay v. Permanente Medical Group, Inc.* (N.D. Cal.
23 2007) 2007 WL 4374273; *see also Drissi v. Kaiser Foundation Hospitals, Inc.* (N.D.
24 Cal. 2007) 2008 WL54382.)

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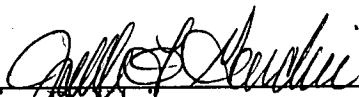
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1 DATED: March 3, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

2
3
4 By


Elise D. Klein
Janelle F. Garchie
Attorneys for HEALTH NET OF
CALIFORNIA, INC.

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LEWIS BRISBOIS BISGAARD & SMITH LLP

221 NORTH FIGUEROA STREET, SUITE 1200
LOS ANGELES, CALIFORNIA 90012-2601
TELEPHONE (213) 250-1800

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

See Attachment A

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
FREDA SUSSMAN

FOR COURT USE ONLY
CIVIL BEHAVIORAL DIVISION 2
CENTRAL DIVISION

2007 NOV 13 PM 3:56

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Diego Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso) 2007-00081656-CU-MM-CT1

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Nancy Sussman, Esq., SBN108689, Hayworth & Sussman, 1901 First Avenue, Suite 220, San Diego, CA.
92101 phone: (619) 231-1215

DATE:
(Fecha) NOV 13 2007

Clerk, by K Brown
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☒ as the person sued under the fictitious name of (specify): Doc 1
Healthnet of California

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

ATTACHMENT A

ARMELIA SANI, M.D., SHILEY EYE CENTER,
UCSD MEDICAL CENTER, REGENTS OF THE
UNIVERSITY OF CALIFORNIA, HEALTH NET
SENIORITY PLUS, LINDA BEACH, HAIDEE
GUTIERREZ, and DOES 1 through 40, inclusive.

FILED
CIVIL BUSINESS OFFICE 2
CENTRAL DIVISION

2007 NOV 13 PM 3:56

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 Nancy Sussman SBN108689
HAYWORTH AND SUSSMAN
2 1901 First Avenue, Suite 220
San Diego, CA 92101
3 Telephone: (619) 231-1215

4 Thor O. Emblem SBN 141880
Law Office of Thor Emblem
5 205 West Fifth Ave., Suite 105
Escondido, CA 92025
6 Telephone: (760)738-9301

7 Attorneys for Plaintiff

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9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 FRED A SUSSMAN,)	CASE NO. 37-2007-00081656-CU-MM-CTL
13 Plaintiff,)	
14)	COMPLAINT FOR
15 v.)	MEDICAL MALPRACTICE, LACK OF
16 ARMELIA SANI, M.D., SHILEY EYE CENTER))	INFORMED CONSENT, VIOLATION OF
17 UCSD MEDICAL CENTER, REGENTS)	MEDICAL INFORMATION ACT,
18 OF THE UNIVERSITY OF CALIFORNIA,)	RETALIATION AGAINST A PATIENT,
19 HEALTH NET, INC., HEALTH NET)	BREACH OF FIDUCIARY DUTY, BAD
20 SENIORITY PLUS, LINDA BRACH,)	FAITH INSURANCE TACTICS, UNFAIR
21 HAIIDEE GUTIERREZ,)	BUSINESS PRACTICES, VIOLATION
22 DOES 1 through 40,)	OF PENAL CODE SECTION 502
inclusive,)	
Defendants.)	

23
24 Comes now Plaintiff FRED A SUSSMAN for causes of action against defendants, and each of
25 them, alleges as follows:

26 1. At all times herein mentioned, Plaintiff FRED A SUSSMAN was a resident of San Diego
27 County, California.

28 *Complaint*

1 2. At all times mentioned herein, Defendant, UCSD MEDICAL CENTER (hereafter
2 referred to as "Medical Center") was a hospital duly licensed and accredited as an acute medical facility
3 in the State of California.

4 3. Defendants, REGENTS OF THE UNIVERSITY OF CALIFORNIA are the owners and
5 operators of Defendant UCSD MEDICAL CENTER.

6 4. Defendant, SHILEY EYE CENTER is a subsidiary of Defendant UCSD MEDICAL
7 CENTER.

8 5. Defendant, ARMELIA SANI M.D. is a medical doctor in internal medicine and is licensed
9 by the State of California and she is an employee of the Defendant, UCSD and REGENTS OF THE
10 UNIVERSITY OF CALIFORNIA.

11 6. At all time mentioned herein, Defendant SANI held herself out to possess that degree of skill,
12 ability and learning common to general practitioners, and at all times mentioned herein she held herself
13 out as a licensed and trained physician with experience in internal medicine with an office in San Diego
14 California.

15 7. At all times mentioned herein, Defendant LINDA BEACH was an agent and employee of
16 Defendants UCSD MEDICAL CENTER and REGENTS OF THE UNIVERSITY OF CALIFORNIA.

17 8. At all times mentioned herein, Defendant HAIDE E GUTIERREZ was an agent and
18 employee of Defendants UCSD MEDICAL CENTER and REGENTS OF THE UNIVERSITY OF
19 CALIFORNIA.

20 9. At all times mentioned herein said Defendant HEALTH NET, INC. was an insurance
21 company that administered its "Health Net Seniority Plus" program with UCSD as HMO. Its principal
22 place of business is Woodland Hills, California, but is doing business in San Diego County, California.

23 10. The true names and capacities of defendants named herein as DOES 1 through 40,
24 inclusive are unknown to plaintiff who therefore sues said defendants, and each of them, by such fictitious
25 names. Plaintiff will amend this complaint to show their true names and capacities when they have been
26 ascertained. Plaintiff is informed and believes and thereon alleges that each of said fictitiously named
27

1 defendants are negligently responsible in some manner for the occurrences herein alleged, and Plaintiff's
 2 injuries as herein alleged were proximately caused by the negligence of each defendant.

3 11. At all times herein mentioned, defendants, DOES 1 through 40, inclusive, and each of them,
 4 were the agents or employees of defendants, and each of them, and in doing the things hereinafter alleged,
 5 were acting within the scope of their authority as such agents and employees and with the consent of their
 6 co-defendants.

7 12. Plaintiff's 90 Day Notices of Intention to Sue a Health Care Provider pursuant to C.C.P.
 8 section 364 were served on 5/25/07. See Exhibits 1 and 2, attached hereto and incorporated by reference.
 9 Plaintiff's action is timely pursuant to C.C.P. Section 340.5.

10 13. Plaintiff's Demand to Preserve Evidence pursuant to C.C.P. section 2035.010 et seq was
 11 served on Defendants REGENTS OF THE UNIVERSITY OF CALIFORNIA and UCSD MEDICAL
 12 CENTER on April 30, 2007. See Exhibit 3.

13
 14 **I.**
FIRST CAUSE OF ACTION
MEDICAL MALPRACTICE (I)

15 (Against Defendants SANI, UCSD MEDICAL CENTER, and REGENTS OF
 16 THE UNIVERSITY OF CALIFORNIA)

17 14. Plaintiff reasserts paragraphs 1-13 as though fully set forth herein.

18 15. Defendant SANI had been the Plaintiff's primary physician for several years prior to the
 19 subject incidents. Plaintiff had been treating at Defendant UCSD for over 20 years. The Defendant had a
 20 duty to use reasonable care in treating the Plaintiff. The Defendant knew that the Plaintiff had several
 21 medical conditions, including diabetes and hypertension and had developed atrial fibrillation while under
 22 defendant's SANI's care but was not treated for the same nor referred to a cardiologist. The Defendant
 23 also knew that there was a family history of stroke.

24 16. Plaintiff manifested unexplained mostly unilateral deficits in her visual field tests, difficulty
 25 walking, balance problems, shortness of breath, change in vision, peripheral lower extremity edema, atrial
 26 fibrillation untreated, and Diabetes and an undiagnosed, emergent heart murmur. During the last year of
 27 her treatment of the Plaintiff, the Defendant ignored an alarming increase in the number and severity of
 28 factors for and signs of a stroke.

17. Defendant SANI failed to diagnose and treat Plaintiff's atrial fibrillation, diabetes, edema, heart problems, and balance problems, and diagnosis murmurs and to perform tests to determine the condition of the carotid arteries and did not diagnose the severe occlusion thereof. Defendant did not treat atrial fibrillation which greatly increased the risks of having a stroke. The Defendant stopped conducting essential tests and ordering lab and medication in order to reduce costs for Defendant HEALTH NET. The Defendant failed to provide continuity of care, and she did not order new medications or laboratory for the nearly entire duration of her care of Plaintiff. The Defendant failed to heed the warnings of the Plaintiff's immediate family members just one month prior regarding the Plaintiff's daughter's concerns about impending stroke symptoms or even call the patient herself. However after the C.V.A. (stroke), Defendant immediately tried to contact the patient and violated H.I.P.A.A. (45 C.F.R. section 164.534 et seq) to acquire information from a subsequent hospital when her family called to complain about the care rendered by Defendant SANI.

18. The misconduct described above was below the standard of care for reasonable practitioners in the same or similar circumstances.

19. As a direct result of the misconduct of the Defendant, on 2/23/07, the Plaintiff suffered a massive stroke. Plaintiff is severely impaired, and completely physically dependent, and requires and will for the rest of her life require 24 hour care from a home health aid for the remainder of her life. As a direct result of the misconduct of the Defendant, the Plaintiff has and will continue to suffer special and general damages, including pain and suffering and emotional distress according to proof.

II
SECOND CAUSE OF ACTION
MEDICAL MALPRACTICE (II)
(Against Defendants SHILEY EYE CENTER, UCSD MEDICAL CENTER and REGENTS OF THE UNIVERSITY OF CALIFORNIA)

20. Plaintiff reasserts paragraphs 1-19 as though fully set forth herein.

21. Defendant SHILEY EYE CENTER and its agents had a duty to use reasonable care in treating the Plaintiff. The conduct of the Defendants fell below the standard of care by failing to exclude the Plaintiff's sudden visual field deficit that were not related to glaucoma but were indications of her impending stroke and unilateral severe right carotid occlusion. Instead, Defendant's agents merely

1 concluded that the Plaintiff's pronounced visual field defects "could not be explained." Defendant's
 2 agent, a fellow, ordered an MRI of the brain to exclude a brain tumor. Dr. Leung was only a fellow and
 3 not an experienced specialist. Defendant SHILBY had very experienced ophthalmologists who the attending
 4 physicians at SHILBY knew had much more experience than Dr. Leung. The fellow presented the
 5 Plaintiff's case to his superiors requesting help in establishing the rule out diagnoses. When the MRI
 6 failed to disclose the cause of Plaintiff's problems, the attending superiors encouraged the fellow to
 7 forget about it, because of Plaintiff's age. Instead Defendant failed to attribute the problem, with a
 8 primarily unilateral visual change to occlusion of the Carotid artery. Instead, Defendant identified the
 9 visual field defects as being due to the Plaintiff's age and were dismissive of the cause due to Plaintiff's
 10 age.

11 22. A pre M.R.I. visit was changed to try to make it appear that the change in visual field was
 12 bilateral instead of unilateral.

13 23. Reasonable and customary practice would have been to conduct further tests to ascertain
 14 the cause of Plaintiff's visual field defects. If such tests had been conducted, Plaintiff's massive right
 15 sided stroke could and would have been avoided. Although an impending stroke was considered by the
 16 Defendant's agents as the cause of the deficit, it was cost prohibitive to go any further as to diagnosis.

17 24. As a direct result of the negligence of the Defendant's agents, the Plaintiff suffered a
 18 massive and debilitating stroke on 2/23/07. Plaintiff is severely impaired, completely physically
 19 dependent, and now requires 24 hour care from a home health aid. As a direct result of the misconduct
 20 of the Defendants, the Plaintiff has and will continue to suffer special and general damages according to
 21 proof at trial.

22 **III**
 23 **THIRD CAUSE OF ACTION**
 24 **LACK OF INFORMED CONSENT (I)**

(Against Defendants SANI, UCSD MEDICAL CENTER and REGENTS OF THE UNIVERSITY
 24 OF CALIFORNIA)

25 25. Plaintiff reasserts paragraphs 1-24 as though fully set forth herein.

26 26. The Defendants had a duty to use reasonable care in treating Plaintiff. During the last nine
 27 months of her treatment of the Plaintiff, the Defendant ignored an alarming increase in the number and

28 *Complaint*

1 severity of factors for and signs of a stroke. Plaintiff manifested unexplained deficits in her visual field
2 tests, difficulty walking, balance problems, shortness of breath, edema on only one side of her body, atrial
3 fibrillation, and a newly discovered heart murmur.

4 27. Defendant SANI failed to treat the atrial fibrillation, diabetes, edema, heart problems, and
5 balance problems, and did not provide to the Plaintiff a warning regarding the significance of atrial
6 fibrillation. The Defendant failed to provide continuity of care, as evidenced by the fact that she did not
7 order new medications for five years. The Defendant stopped conducting essential tests in order to reduce
8 costs. The Defendant on information and belief had a financial incentive to reduce the cost of treatment to
9 patients such as the Plaintiff. The Defendant did not test or scan the carotid arteries to rule out
10 occlusion.

11 28. Defendant, SANI, failed to inform the Plaintiff of the significance of the problems she was
12 experiencing. Defendant failed to inform Plaintiff of the existence and need for tests which would
13 disclose the cause of her problems. Defendant also failed to disclose to Plaintiff the material risks of
14 failing to order appropriate new medications over the last five years of her treatment of Plaintiff. A
15 reasonable patient in the Plaintiff's position would want to know the existence and significance of the
16 tests which would disclose the cause of Plaintiff's medical condition, and of the material risks of failing
17 to order appropriate new medications over the last five years of her treatment particularly with new onset
18 of atrial fibrillation, systolic murmur and problems with walking. Defendant, SANI, failed to disclose the
19 existence and significance of the tests which would disclose the cause of the Plaintiff's medical condition,
20 and failed to order appropriate new medications in an effort to reduce the cost of Plaintiff's care.
21 Defendant, SANI, failed to refer Plaintiff to a cardiologist because of her Medicare supplement.

22 Defendant SANI failed to disclose the financial interest she had in reducing the cost of care rendered to
23 Plaintiff. That is, on information and belief, the Defendant because of incentives the Defendant would
24 increase her income to her employer by saving money for the HMO by reducing the cost of care rendered
25 to the Plaintiff. A reasonable patient in the Plaintiff's situation would have demanded that she receive the
26 relevant tests and appropriate medications. Plaintiff requested to be transferred to the care of Dr
27 Ramsdale, but Defendant SANI's nurse refused, stating that she was not able to transfer the plaintiff. Dr

Ramsdale was a Geriologist and was more familiar with the care and treatment of atrial fibrillation and the administration of Coumadin and the testing involved. Defendant SANI was preoccupied with her two children, one a new baby and was only working part time. Defendant SANI was not taking any new HMO patients.

29. The failure of the Defendant to disclose the material facts regarding the lack of treatment of the Plaintiff's risk factors for stroke directly caused Plaintiff to acquiesce in the non-treatment by the Defendant as she was not offered any treatment. As a direct result of the negligence of the Defendant, Plaintiff suffered a massive and debilitating stroke on 2/23/07. Plaintiff is severely impaired, completely physically dependent, and requires 24 hour care from a home health aid for the remainder of her life. As a direct result of the misconduct of the Defendant, the Plaintiff has and will continue to suffer special and general damages according to proof at trial.

IV.

FOURTH CAUSE OF ACTION

LACK OF INFORMED CONSENT (II)

(Against Defendants SHILEY EYE CENTER, UCSD MEDICAL CENTER, and REGENTS OF THE UNIVERSITY OF CALIFORNIA)

30. Plaintiff reasserts paragraphs 1-29 as though fully set forth herein.

31. Defendants had a duty to disclose all material risks and benefits of their treatment of Plaintiff, and to obtain Plaintiff's informed consent to any treatment. Defendant's agents merely concluded that the Plaintiff's pronounced visual field defects "could not be explained." Defendant's agent ordered an MRI of the brain to exclude a brain tumor. Dr Leung was only a fellow and not an experienced specialist. He presented the Plaintiff's case to his superiors for help in the diagnosis. Dr. Leung's request for a conference regarding the Plaintiff's case was arbitrarily denied. When the MRI failed to disclose the cause of the Plaintiff's problems, the fellow's superiors failed to follow up with attempts to determine the true cause of the visual field defects. Instead, the attending of the Superior Eye Center simply attributed the visual field defects as being due to the Plaintiff's age.

32. Defendant's agents failed to disclose the risks associated with failing to properly follow up with respect to the actual causes of the plaintiff's visual field defects when the MRI failed to disclose the cause of the Plaintiff's problems. A reasonable patient in the Plaintiff's situation would want to be

1 informed regarding the failure to follow up on the actual cause of the Plaintiff's problems given that the
2 MRI failed to disclose the cause.

3 33. If the appropriate tests had been conducted, the occlusion of the right carotid artery would
4 have been recognized. The massive stroke Plaintiff suffered could have been avoided. Although an
5 impending stroke was considered by Defendant's agents as the cause of the defects, the case was deferred
6 as glaucoma changes due to advanced age.

7 34. A reasonable patient in the Plaintiff's situation would have demanded that the Defendant's
8 agents conduct further testes in order to ascertain the actual cause of the Plaintiff's problems. The injury
9 to the Plaintiff resulting from Defendants' misconduct was not manifested until she suffered the massive
10 stroke. As a direct result of the negligence of the Defendant's agents, the Plaintiff suffered a massive and
11 debilitating stroke on 2/23/07. The Plaintiff is severely impaired, completely physically dependent, and
12 requires and will require 24 hour care from a home health aid for the remainder of her life. As a direct
13 result of the misconduct of the Defendant, the Plaintiff has and will continue to suffer special and general
14 damages according to proof at trial.

15
16 **V.**
FIFTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
(Against Defendant SANI)

17
18 35. Plaintiff reasserts paragraphs 1-34 as though fully set forth herein.

19 36. As the Plaintiff's treating physician, at all times herein Defendant SANI had a fiduciary
20 duty to the Plaintiff. During the last nine months of her treatment of the Plaintiff, before the CVA of
21 2/23/07, the Defendant ignored an alarming increase in the number and severity of factors and signs of a
22 stroke. The Plaintiff manifested unexplained deficits in her visual field tests, difficulty walking, balance
23 problems, shortness of breath, edema on only one side of her body, atrial fibrillation, and an newly
24 discovered heart murmur.

25 37. Defendant, SANI failed to treat the atrial fibrillation, diabetes, edema, heart problems, and
26 balance problems, and did not give Plaintiff a warning regarding the significance of atrial fibrillation.
27 Defendant failed to provide continuity of care, as evidenced by the fact that she did not order new

1 medications for five years. Defendant stopped conducting essential tests in order to reduce costs. The
 2 Defendant on information and belief had a financial incentive to reduce the cost of treatment to patients
 3 such as Plaintiff.

4 38. Defendant, SANI intentionally failed to inform the Plaintiff of the significance of the
 5 problems she was experiencing. The Defendant intentionally failed to inform the Plaintiff of the
 6 existence and need for tests which would disclose the cause of her problems. The Defendant also
 7 intentionally failed to disclose to the Plaintiff the material risks of failing to order appropriate new
 8 medications over the last five years of her treatment of the Plaintiff, resulting in the CVA of 2/23/07.
 9 Defendant SANI failed to disclose the existence and significance of the tests which would disclose the
 10 cause of the Plaintiff's medical condition, and failed to order appropriate new medications in an effort to
 11 reduce the cost of the Plaintiff's care. Defendant SANI failed to refer Plaintiff to a cardiologist.
 12 Defendant SANI failed to disclose the financial interest she had in reducing the cost of care rendered to
 13 the Plaintiff. That is, on information and belief, the Defendant because of incentives the Defendant would
 14 increase her income to her employer by saving money for the HMO by reducing the cost of care rendered
 15 to the Plaintiff. Plaintiff requested to be transferred to the care of Dr Ramsdale, but Defendant SANI's
 16 nurse refused stating that she was not able to transfer plaintiff. Dr Ramsdale was a Geriologist and was
 17 more familiar with the care and treatment of atrial fibrillation and the administration of Coumadin and the
 18 required testing involved. Defendant SANI was preoccupied with her two children, one a new baby and
 19 was only working part time. Defendant SANI was not taking any new HMO patients.

20 39. Further, subsequent to being informed of Plaintiff's CVA, Defendant SANI began to alter
 21 with fraudulent intent the Plaintiff's medical records. The alterations were exculpatory. The Defendant
 22 cut and pasted information out of a template and/or incorporated information from another patient, and
 23 Plaintiff's previous records and conspired with others, including Defendants BRACH and GUTIERREZ,
 24 to do the same. The alterations occurred during or immediately before a telephone conversation between
 25 the Defendant and the Plaintiff's daughter, Nancy Sussman, in which she complained about Dr SANI's
 26 care and lack thereof and Defendant's failure to return the phone call prior to the stroke. Defendant
 27 initiated a campaign of inserting false and defamatory statements into the Plaintiff's medical and hospital

1 records which was entirely irrelevant to the Plaintiff's medical care. After the records were altered and
 2 rearranged, the Defendant took them to Risk Management in a fraudulent attempt to have the records
 3 validated as the "original" records.

4 40. The altered medical records provide a false and exculpatory account of the negligent care
 5 rendered to Plaintiff by Defendant. The representation Defendant now makes that the records are true
 6 and accurate is false and Defendant knows that it is false. Defendant's misconduct was an intentional
 7 violation of the fiduciary duties she owed the Plaintiff.

8 41. As a direct result of the misconduct of the Defendant, the Plaintiff suffered a massive and
 9 debilitating stroke on 2/23/07. Plaintiff is severely impaired, completely physically dependent, and
 10 requires and will for the rest of her life require 24 hour care from a home health aid. As a direct result of
 11 the misconduct of the Defendant that occurred both prior to and after the Plaintiff's stroke, the Plaintiff
 12 has and will continue to suffer special and general damages according to proof at trial.

14 VI.

15 SIXTH CAUSE OF ACTION

16 RETALIATION AGAINST A PATIENT IN VIOLATION OF HEALTH AND SAFETY

17 CODE SECTION 1278.5(b)(1) ET SEQ

18 (Against Defendants SANI, BEACH, GUTIERREZ, UCSD MEDICAL CENTER, and
 19 REGENTS OF THE UNIVERSITY OF CALIFORNIA)

20 42. Plaintiff reasserts paragraphs 1-41 as though fully set forth herein.

21 43. Subsequent to being informed of the Plaintiff's CVA, in retaliation against the Plaintiff for
 22 her presentation of a complaint and/or grievance, Defendant SANI began to alter with fraudulent intent the
 23 Plaintiff's medical records. The alterations were exculpatory. The Defendant cut and pasted information
 24 out of a template and/or incorporated information from another patient, and conspired with others,
 25 including Defendants BEACH and GUTIERREZ to do the same. The alterations occurred during or
 26 immediately before a telephone conversation between the Defendant and the Plaintiff's daughter, Nancy
 27 Sussman, in which she complained about Dr SANI's care and lack thereof and her failure to return the

1 phone call PRIOR to the stroke. Defendants initiated a campaign of inserting false and defamatory
2 statements into the Plaintiff's medical records which were entirely irrelevant to the Plaintiff's medical
3 care. The inserted statements consisted of personal attacks against Plaintiff's daughter, who was
4 attempting to ensure that Plaintiff receive adequate care after the occurrence of the stroke due to
5 Defendant's negligence. Defendants changed the phone message of the plaintiff's daughter. The
6 Defendants also inserted such irrelevant and inflammatory statement into records of telephone calls with
7 the Plaintiff's daughter. The Defendant also caused other agents of U.C.S.D., including Defendants
8 BEACH and GUTIERREZ to include such material in their accounts of telephone conversations with the
9 Plaintiff's daughter. After the records were doctored, the Defendant to them to Risk Management in a
10 fraudulent attempt to have the records validated as the original records.

11
12 44. The altered medical records provide a false and exculpatory account of the negligent care
13 rendered to Plaintiff by Defendant. Defendant now falsely represents that the records are true and
14 accurate is false and Defendant knows that it is false. When the defendant made this representation, she
15 knew it to be false and made this representation with the intent to retaliate against the Plaintiff by
16 discrediting members of Plaintiff's family and to destroy Plaintiff's chance to seek redress for the injuries
17 caused her by Defendant.

18 45. As a direct result of Defendant's misconduct, Plaintiff has suffered and will continue to
19 suffer humiliation, mental anguish, and damages according to proof.

20 46. The aforementioned conduct of Defendants was intentional, and was despicable conduct that
21 subjected the plaintiff to a cruel and unjust hardship in conscious disregard of plaintiff's rights.

22 ///

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27
28 Complaint

VIL

SEVENTH CAUSE OF ACTION

**VIOLATION OF CONFIDENTIALITY OF MEDICAL INFORMATION ACT CIVIL CODE
SECTION 56.10 ET SEQ**

(Against Defendants SANI, BEACH, GUTIERREZ UCSD MEDICAL CENTER, and
REGENTS OF THE UNIVERSITY OF CALIFORNIA)

47. Plaintiff reasserts paragraphs 1-46 as though fully set forth herein.

48. Pursuant to Civil Code section 56.10 et seq, Defendants had a duty not to disclose medical information without first obtaining the consent of Plaintiff. Subsequent to being informed of the Plaintiff's CVA, in retaliation against Plaintiff for her presentation of a complaint and/or grievance, Defendant SANI began to alter with fraudulent intent the Plaintiff's medical records. The alterations were exculpatory. Defendant cut and pasted information out of a template and/or incorporated information from another patient, and conspired with others to do the same. The alterations occurred during or immediately before a telephone conversation between Defendant and Plaintiff's daughter. Defendant initiated a campaign of inserting false and defamatory statements into Plaintiff's medical records which was entirely irrelevant to Plaintiff's medical care. The inserted statements consisted of personal attacks against the Plaintiff's daughter, who was attempting to ensure that the Plaintiff receive adequate care after the occurrence of the stroke. The Defendant also inserted such irrelevant and inflammatory statement into records of telephone calls with the Plaintiff's daughter. The Defendant also caused or conspired with other agents of UCSD, including Defendants BEACH and GUTIERREZ, to include such material in their accounts of telephone conversations with the Plaintiff's daughter and change the patient's phone messages and visits as well. After the records were altered, the Defendant took them to Risk Management in a fraudulent attempt to have the records validated as the "original" records.

49. The altered medical records provide a false and exculpatory account of the negligent care rendered to the Plaintiff by Defendant. The representation the Defendant now makes that the records are true and accurate is false and the Defendant knows that it is false. When the defendant made this

1 representation, she knew it to be false and made this representation with the intent to retaliate against the
 2 Plaintiff and to destroy her chance to seek redress for the injuries caused her by the Defendant.

3 50. Defendants violated the Confidentiality of Medical Information Act by making false and
 4 defamatory statements to others that was not necessary for, or related to, the care of Plaintiff. As a direct
 5 result of Defendants' misconduct, Plaintiff has suffered and will continue to suffer humiliation, mental
 6 anguish, and damages according to proof at trial.

7 51. The aforementioned conduct of Defendants was intentional, and was despicable conduct
 8 that subjected the plaintiff to a cruel and unjust hardship in conscious disregard of plaintiff's rights.

9 VIII.

10 EIGHTH CAUSE OF ACTION

11 BAD FAITH INSURANCE TACTICS

12 (Against Defendants HEALTHNET, INC., and HEALTHNET SENIORITY PLUS)

13 52. Plaintiff reasserts paragraphs 1-51 as though fully set forth herein.

14 53. At all times herein, Plaintiff FRED A SUSSMAN was a member of Defendant
 15 HEALTHNET, an Health Maintenance Organization (HMO). The Plaintiff was a participant in the
 16 HEALTHNET SENIORITY PLUS, a Medicare Supplement program administered by Defendant
 17 HEALTH NET. HMOs make money by reducing costs, which in this case severely adversely affected the
 18 quality of care Plaintiff received.
 19

20 54. Subsequent to Plaintiff's stroke, the Plaintiff was taken to the ICU at Alvarado Hospital as
 21 she was too unstable for transport to UCSD. She remained at Alvarado for seven days. After seven days,
 22 the Plaintiff was removed from Alvarado's Telemetry floor at nine p.m. to U.C.S.D., due to the
 23 Defendant's contractual relationship with U.C.S.D. Plaintiff was transferred from L.C.U. and was still
 24 unstable. She was awakened from her sleep and dragged in the middle of the night to UCSD arriving
 25 around 10:00 P.M. because Health Net was afraid that if they waited one more day they would have to pay
 26 an outside hospital additional costs.
 27

1 55. Just prior to the transfer to UCSD, an internist, Dr. Ramenini, and a neurologist, Dr.
2 Evens, had recommended that Plaintiff be placed in an acute rehabilitation facility. After all it was the
3 Plaintiff first stroke. The recommendations were placed in the Plaintiff's chart, which was forwarded to
4 UCSD with her hospital records.

5 56. Despite the recommendations for acute rehabilitation, after 4 days at UCSD the
6 Defendant's contracting agent indicated that the Plaintiff was not eligible for rehabilitation therapy
7 because a physical therapist said so at the only contracting facility, i.e. Sharp Rehabilitation Hospital, that
8 was covered by her supplemental insurance. Defendant UCSD refused to fax the recommendations of
9 Drs. Ramenini and Evens to Sharp Rehabilitation Hospital. As a result, a non physician "physical
10 therapist" at UCSD stated that the Plaintiff could not endure three hours of rehabilitation services a day,
11 and so she should be transferred to a nursing facility. However, another case worker at Defendant UCSD
12 on the 8th floor confirmed the two physicians' opinion that the Plaintiff met the criteria for acute
13 rehabilitation and suggested Plaintiff's transfer for rehabilitation at Alvarado Hospital. It is important to
14 note that Sharp and Alvarado have the same criteria for admission into acute rehabilitation. The operative
15 difference is that the Defendants HEALTHNET and HEALTHNET SENIORITY PLUS would pay for
16 therapy at Sharp Rehabilitation, but not at Alvarado Rehabilitation.

17 57. As a result of the denial of services based upon the opinion of a non physician "physical
18 therapist," the plaintiff's daughter, who had the Plaintiff's power of attorney, was informed that the Plaintiff
19 would have to pay for rehabilitation services out of pocket or the Plaintiff would be transferred to a nursing
20 facility, Magnolia. The Magnolia facility had received numerous citations from the D.H.S. and was one of
21 the worst in San Diego County. The Plaintiff's family had no choice to transfer the plaintiff to Alvarado
22 Medical Center. The out of pocket costs included a week of services and physician bills in excess of \$51,000.
23 Defendant also said Plaintiff will have to pay if she wants an ambulance to transfer as Defendant's insurance
24 company only pays for Hospital-nursing home transfers. Plaintiff's family said they would then have to drive
25 the patient to the Rehabilitation Center. All of a sudden an ambulance appeared.

1 58. Despite being on actual notice of the fact that the Plaintiff had suffered a debilitating stroke
2 and needed immediate rehabilitation services, the Defendant without adequate investigation and with no
3 reasonable basis denied the Plaintiff's request for such services. The Defendant refused to authorize
4 rehabilitation services in a timely manner, despite being on actual notice that time was of the essence in that
5 immediate rehabilitation was necessary in order to mitigate permanent injury. The Defendant's decision was
6 ostensibly based upon the groundless opinion of a "physical therapist," in contradiction to the considered
7 opinion of two qualified physicians. The decision was pretextual, as proven by the fact that another case
8 worker at Defendant UCSD on the 8th floor confirmed the two physicians' opinion that the Plaintiff met the
9 criteria for acute rehabilitation and suggested her transfer for rehabilitation at Alvarado Hospital. Further
10 evidence of the pretextual nature of the decision is the fact that despite the insistence by the Plaintiff's
11 daughter to fax the physicians' recommendations to Sharp Hospital Rehab., UCSD refused. As a result of the
12 denial of services based upon the opinion of a non physician "physical therapist," the plaintiff's daughter, who
13 had the Plaintiff's power of attorney, was informed that the Plaintiff would have to pay for rehabilitation
14 services out of pocket or would be transferred to a nursing facility, Magnolia. The Magnolia facility had
15 received numerous citations from the D.E.L.S. and was one of the worst in San Diego County. The Plaintiff's
16 family had no choice to transfer the plaintiff to Alvarado Medical Center. The out of pocket costs included
17 a week of services and physician bills in excess of \$51,000.
18

19 59. The misconduct of Defendants HEALTHNET and HEALTHNET SENIORITY PLUS is part
20 of a pattern and practice of refusing to pay for adequate care for its members in order to raise its profits.
21 Although Defendants represent to perspective clients that they will receive better care than they would
22 under regular Medicare, such is not the case. Defendants use a combination of incentives and
23 disincentives to discourage the issuance of prescriptions and the rendering of necessary care. Defendants
24 do not reimburse providers such as Defendants UCSD and SANI sufficiently, but rather discourage the
25 provision of necessary care. Defendants effectively cause providers to consider their own financial
26 interests as more important than the care of the members of the health plan.
27

60. In fact, the members of Defendants' health plan would have their interests better served by not participating in the Defendants' managed health care plan, but rather by being fee for service Medicare patients. The Defendants effectively discouraged preventative and diagnostic tests such as for diabetes or to detect heart conditions such as atrial fibrillation and murmurs. They discourage the use of physical therapy for good candidates therefor such as the Plaintiff, and rather attempt to send them to nursing homes, which is cheaper. Patients receiving ordinary Medicare benefits would have better access to quality care.

61. As a result of the Defendant's unreasonable refusal to authorize rehabilitation, the Plaintiff has incurred costs in the amount of over \$51,000.00.

62. The aforementioned conduct of the defendant was intentional, and was despicable conduct that subjected the plaintiff, the Defendant's insured, to a cruel and unjust hardship in conscious disregard of the plaintiff's rights. She has suffered general and special damages in an amount according to proof.

**IX.
NINTH CAUSE OF ACTION
FRAUD AND DECET**

(Against Defendants **HEALTHNET, INC.,** and **HEALTHNET SENIORITY PLUS**)

63. Plaintiff reasserts paragraphs 1-62 as though fully set forth herein.

64. At all times herein, Plaintiff FRED A SUSSMAN was a member of Defendant HEALTHNET, an Health Maintenance Organization (HMO). The Plaintiff was a participant in the HEALTHNET SENIORITY PLUS, a Medicare Supplement program administered by Defendant HEALTH NET. HMOs make money by reducing costs, which in this case severely adversely affected the care the Plaintiff received.

65. Defendants HEALTHNET and HEALTHNET SENIORITY PLUS engage in a practice of representing to members of the public such as Plaintiff that they should enroll in their health plan. The Defendants represent that members of the public such as Plaintiff will receive thoroughly adequate care, care that is superior to that provided by Medicare. In fact, Defendants use a combination of incentives

1 and disincentives to providers to discourage the issuance of prescriptions and the rendering of necessary
2 care, including the performance of necessary tests.

3 66. When Defendants made these representations, they knew them to be false and made
4 these representation with the intention to deceive and defraud Plaintiff and to induce Plaintiff to
5 act in reliance on these representations in the manner hereafter alleged, or with the expectation
6 that Plaintiff would so act.

7
8 67. Plaintiff, at the time these representations were made by defendant, and at the
9 time the plaintiff took the actions herein alleged, was ignorant of the falsity of Defendants'
10 representations and believed them to be true. In reliance on these representations, Plaintiff
11 was induced to and did rely to her detriment. Had Plaintiff known the actual facts, she would
12 not have taken such action. Plaintiff's reliance on the defendant's representations was
13 justified because Plaintiff reasonably relied upon the Defendants to fulfill their contractual and fiduciary
14 duty to Plaintiff.

15
16 68. As a direct result of the misconduct of Defendants, Plaintiff enrolled in their health plan
17 and received substandard care. As a direct result of the misconduct of Defendants, Plaintiff has and will
18 continue to suffer special and general damages according to proof.

19
20 69. The aforementioned conduct of Defendants was an intentional misrepresentation,
21 deceit, or concealment of a material fact known to Defendants with the intention on the part
22 of the defendants thereby depriving Plaintiff of property or legal rights or otherwise
23 causing injury, and was despicable conduct that subjected Plaintiff to a cruel and unjust
24 hardship in conscious disregard of Plaintiff's rights.

25
26 ///

27 ///

28 *Complaint*

X.

TENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(Against Defendants HEALTHNET, INC., and HEALTHNET SENIORITY PLUS)

70. Plaintiff realleges paragraphs 1-69 as though fully set forth herein.

71. The misconduct of Defendants HEALTHNET and HEALTHNET SENIORITY PLUS is part of a pattern of refusing to pay for adequate care for its members in order to raise profits. The Defendants use a combination of incentives and disincentives to providers to discourage the issuance of prescriptions and the rendering of necessary care, including the performance of necessary tests. The Defendants do not reimburse providers such as Defendants UCSD and SANI sufficiently, but rather discourage the provision of adequate care. The Defendants effectively cause providers to consider their own financial interests as more important than the care of the members of the health plan.

72. In fact, the members of Defendants' health plan would have their interests better served by not participating in the Defendants' managed health care plan, but rather by being fee for service Medicare patients. The Defendants effectively discouraged preventative and diagnostic tests such as for diabetes or to detect heart conditions such as atrial fibrillation and murmurs. They discourage the use of physical therapy for good candidates therefor such as the Plaintiff, and rather attempt to send them to nursing homes, which is cheaper.

73. The misconduct of the Defendants constitutes an unfair business practice within the meaning of Business and Professions Code section 17200 et seq. The unfair business practice will continue unabated unless this court intervenes to prohibit such practices.

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Complaint

XL

ELEVENTH CAUSE OF ACTION

VIOLATION OF PENAL CODE SECTION 502

(Against Defendants SANI, BEACH, GUTIERREZ, UCSD MEDICAL CENTER, and
REGENTS OF THE UNIVERSITY OF CALIFORNIA)

74. Plaintiff reasserts paragraphs 1-73 as though fully set forth herein.

75. Subsequent to being informed of the Plaintiff's CVA, in retaliation against the Plaintiff for her presentation of a complaint and/or grievance, Defendants SANI, BEACH and GUTIERREZ began to alter the Plaintiff's medical records. The alterations occurred during or immediately before a telephone conversation between the Defendant and the Plaintiff's daughter in which she complained about Dr. SANI's care and lack thereof and not returning the phone call PRIOR to the stroke. The Defendant initiated a campaign of inserting false and defamatory statements into the Plaintiff's medical records which was entirely irrelevant to the Plaintiff's medical care. The inserted statements consisted of personal attacks against the Plaintiff's daughter, who was attempting to ensure that the Plaintiff receive adequate care after the occurrence of the stroke due to Defendant's negligence. Defendant changed the phone message of the plaintiff's daughter. The Defendant also inserted such irrelevant and inflammatory statement into records of telephone calls with the Plaintiff's daughter. The Defendant also caused or conspired with other agents of U.C.S.D., including Defendants BEACH and GUTIERREZ, to include such material in their accounts of telephone conversations with the Plaintiff's daughter.

76. The misconduct of the Defendant constitutes a violation of Penal Code section 502 (a) et seq. The Defendant abused her right to access to the Plaintiff's medical information contained in electronic form, and caused others who should not have had access to the information. The Defendant and others misrepresented actual data and fraudulently created entries relating to the Plaintiff and her family.

77. The aforementioned conduct of the defendant was intentional, and was despicable conduct that subjected the plaintiff to a cruel and unjust hardship in conscious disregard of the plaintiff's rights.

1
2 WHEREFORE, Plaintiff prays for judgement against the defendants as follows:

- 3 1. For general damages in an amount to be ascertained at trial;
- 4 2. For medical and expenses according to proof;
- 5 3. For special and damages according to proof;
- 6 4. For punitive damages with respect to the FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH,
- 7 and ELEVENTH causes of action;
- 8 5. For attorneys fees;
- 9 6. For restitution of moneys paid to Defendants HEALTHNET and HEALTHNET
- 10 SENIORITY PLUS;
- 11 7. For costs of suit herein incurred;
- 12 8. For such other and further relief as this court may deem proper,
- 13
- 14
- 15

16
17 Dated

11/12/07

HAYWORTH AND SUSSMAN

18
19 By: 

20 Nancy Sussman, Esq.

21

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23

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25

26

27 c:\office\WPWIN\SUSSMAN\complaint

28 Complaint

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Complaint

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Nancy Sussman, Esq., SBN 108689 Hayworth & Sussman 1901 First Avenue, Suite 220, San Diego, CA 92101 TELEPHONE NO.: (619) 231-1215 FAX NO.: (619) 234-4889		CM-010 CIVIL CASE COVER SHEET 2 CENTRAL DIVISION 2007 NOV 13 PM 3:56 JERK SUPERIOR COURT SAN DIEGO COUNTY, CA	
ATTORNEY FOR (Name): FRIDIA SUSSMAN SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Downtown Judicial Branch			
CASE NAME: Sussman v. Sani, et al.			
CIVIL CASE COVER SHEET. <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER: 37-2007-00081658-CU-MM-CTL JUDGE: DEPT.:

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input checked="" type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/WD (23) Non-P/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (14) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court
f. <input type="checkbox"/> Substantial post-judgment judicial supervision |
|--|--|
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Eleven
5. This case ☐ is ☒ is not a class action suit.
- Date: November 13, 2007

Nancy Sussman, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS:	330 West Broadway
MAILING ADDRESS:	330 West Broadway
CITY AND ZIP CODE:	San Diego, CA 92101
BRANCH NAME:	Central
TELEPHONE NUMBER:	(619) 689-6055
PLAINTIFF(S) / PETITIONER(S): Freda Sussman	
DEFENDANT(S) / RESPONDENT(S): Amelia Sanl, M.D. et.al.	
SUSSMAN VS. SANI, M.D.	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00081658-CU-MM-CTL

Judge: Ronald L. Styn

Department: C-62

COMPLAINT/PETITION FILED: 11/13/2007

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except Small Claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00081656-CU-MM-CTL CASE TITLE: Sussman vs. Sanl, M.D.

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defects, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference Judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

ADR OPTIONS

The County of San Diego offers several ADR options to parties in civil cases. These options are designed to help parties resolve their disputes more efficiently and cost-effectively. The options include mediation, arbitration, and settlement conferences. Mediation is a process in which a neutral third party helps the parties negotiate a settlement. Arbitration is a process in which a neutral third party hears the parties' arguments and makes a binding decision. Settlement conferences are held before the judge assigned to the case to help the parties reach a settlement. The County's ADR programs are available to parties in civil cases filed in the County of San Diego Superior Court. For more information about these programs, please contact the County's ADR program office at (619) 238-2400.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): Freda Sussman		
DEFENDANT(S): Amella Sani, M.D. et al.		
SHORT TITLE: SUSSMAN VS. SANI, M.D.		
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)		CASE NUMBER: 37-2007-00081656-CU-MM-CTL

Judge: Ronald L. Styn

Department: C-62

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lapse.

- | | |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input checked="" type="checkbox"/> Private Binding Arbitration |

Other (specify):

It is also stipulated that the following shall serve as arbitrator, mediator, or other neutral: (Name)

Alternate: (mediation & arbitration only)

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 11/13/2007

JUDGE OF THE SUPERIOR COURT

1 Nancy Sussman (SBN 108689)
2 HAYWORTH AND SUSSMAN
3 1901 First Avenue, Suite 220
4 San Diego, CA 92101
5 Telephone: (619) 231-1215

6 Thor O. Emblem, SBN 141880
7 Law office of Thor Emblem
8 205 West Fifth Ave., Suite 105
9 Escondido, CA 92025
10 Telephone: (760) 738-9301

11 Attorney for Plaintiff

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

11 FREDa SUSSMAN,
12 Plaintiff,

13 vs.

14 DR. ARMELIA SANI, M.D., SHILEY EYE
15 CENTER, UCSD MEDICAL CENTER,
16 REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA, HEALTH NET SENIORITY
18 PLUS, LINDA BEACH, HAIDEE
19 GUTIERREZ, and DOES 1 through 40
20 inclusive

21 Defendants.

Case No. 37-2007-00081656-CU-MM-CTL

AMENDMENT TO COMPLAINT

Department C-62
Judge Ronald L. Styn
Complaint Filed: 11/13/2007

22 Plaintiffs were ignorant of a defendant's name, stated that fact in the complaint, and designated the
23 defendant by a fictitious name. That defendant's true name has now been discovered and Plaintiffs hereby
24 amend the complaint as follows:

25 "Health Net of California, Inc." to substitute for "Doe 1."

26 Dated: 1/30/08

HAYWORTH AND SUSSMAN

Nancy Sussman

Attorney for Plaintiffs

DECLARATION OF SERVICE

SUSSMAN V. SANI MD, et al.

SAN DIEGO SUPERIOR COURT CASE: 37-2007-00081656-CU-MM-CTL

I, the undersigned, declare that: I am over the age of 18 years and not a party to the within action. I am employed in the County of San Diego, State of California, where the within mailing or other method of service occurs, and my business address is 1901 First Avenue, Suite 220, San Diego, California 92101

On January 30, 2008 I served the foregoing document described as follows:

AMENDMENT TO COMPLAINT

On:

Thor Emblem, Esq.
Law Offices of Thor O. Emblem
205 W. 5th Street, Suite 105
Escondido, CA 92025

Lisa Iulianelli, Esq.
Carroll, Kelly, Trotter, Franzen & McKenna
PO Box 22636
Long Beach, CA 90801-5636
For Defendants: Dr Sani, Shiley Eye Center,
UCSD Medical Center, Regents of University
of California, Linda Beach, and Haidee
Gutierrez

**C T CORPORATION SYSTEM
818 WEST SEVENTH ST
LOS ANGELES, CA 90017
For: Health Net of California, Inc.**

 X U.S. MAIL, by placing a true copy thereof in a separate sealed envelope for each addressee named above, addressed to each such addressee, respectively, and I then sealed each envelope and, with the postage thereon fully prepaid, placed it for mailing and deposit in the United States Postal Service in accordance with our business' practice on 1/30/2008, at San Diego, California. I am readily familiar with our business practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

____ **PERSONAL SERVICE** by personally delivering a true copy thereof to each addressee named
above or corresponding agent _____ on Date: at ____:____ PM in San Diego,
California

David E. Lizarraga

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS FREDA SUSSMAN</p> <p>(b) County of Residence of First Listed Plaintiff <u>SAN DIEGO</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Nancy Sussman - HAYWORTH & SUSSMAN - 1901 First Avenue, Suite 220, San Diego, California 92101; (619) 231-1215</p>	<p>DEFENDANTS 2008 MAR -3 PM 4:20 ARMELIA SANI, MD; SHIRLEY EYE CENTER; UCSD MEDICAL CENTER; REGENTS OF UNIVERSITY OF CALIFORNIA County of Residence of First Listed Defendant <u>SAN DIEGO</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE CITY LAND INVOLVED.</p> <p>Attorneys (If Known) <u>08 CV 0392 H BLM</u> Elise Klein/Janelle Garchie: Lewis, Brisbois, Bisgaard & Smith - 550 West "C" St., Ste 800, San Diego, CA 92101; 619-233-1006</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%;"> <tr> <td style="width: 50%;"> <p>Citizen of This State <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</p> </td> <td style="width: 50%;"> <p>PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Incorporated or Principal Place of Business In This State</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p> </td> </tr> </table>	<p>Citizen of This State <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</p>	<p>PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Incorporated or Principal Place of Business In This State</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>
<p>Citizen of This State <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</p>	<p>PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Incorporated or Principal Place of Business In This State</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>		

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>	<p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>	<p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395m)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p>	<p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1395w-2b(b)(3)

Brief description of cause:
Medicare Prescription Drug, Improvement and Modernization Act of 2003

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** ☐ CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE DOCKET NUMBER

DATE 03/03/2008 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # 148297 AMOUNT \$350 APPLYING IFP 3/3/08 JUDGE MAG. JUDGE

PROOF OF SERVICE**Freda Sussman v. Armelia Sani, M.D., et al.**

USDC - Southern District Case No.:

Client/Matter: 24592-373

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 West C Street, Suite 800, San Diego, California 92101.

On **March 3, 2008**, I served the following document described as:

1. **Civil Cover Sheet**
2. **Notice of Removal of Action Under 28 U.S.C. Section 1441(b) (Federal Question)**
3. **Certification of Service of Notice to Adverse Party of Removal to Federal Court**
4. **Disclosure Statement Pursuant to Federal Rule of Civil Procedure 7.1**
5. **Notice that Action has been Removed to Federal Court**

on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope addressed as follows:

Nancy Sussman, Esq.
HAYWORTH & SUSSMAN
 1901 First Avenue, Suite 220
 San Diego, CA 92101
 Tel: (619)231-1215
 Attorneys for Plaintiff, Freda Sussman

Thor O. Emblem, Esq.
LAW OFFICES OF THOR EMBLEM
 205 West Fifth Avenue, Suite 105
 Escondido, CA 92025
 Tel: (760) 738-9301
 Attorneys for Plaintiff, Freda Sussman

Lisa Iulianelli, Esq.
CARROLL, KELLY, TROTTER FRANZEN & McKENNA
 P.O. Box 22636
 Long Beach, CA 90801-5636
 Attorneys for Defendants, Amelia Sani, M.D., Shiley Eye Center UCSD Medical Center,
 Regents of the University of California, Linda Beach, Haidee Gutierrez

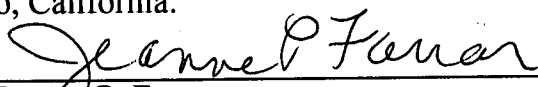
BY MAIL, 1013a, 2015.5 C.C.P.; Rules 5 and 6, Fed. R. Civ. Pro.

I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

FEDERAL

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **March 3, 2008**, at San Diego, California.


 Jeanne P. Farra

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

148297 - SH

**March 03, 2008
16:22:12**

Civ Fil Non-Pris

USAO #: 08CV0392

Judge.: MARILYN L HUFF

Amount.:

\$350.00 CK

Check#: BC67050

Total-> \$350.00

FROM: SUSSMAN V. SANI ET AL